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# Supreme Court of the United States.

OCTOBER TERM, 1965.

No. 608.

LUCILLE E. MORAN,
*Petitioner,*

*v.*

HARRY D. PENAN ET AL.,
*Respondents.*

## BRIEF OF RESPONDENTS JAMES S. BULKLEY AND VALLEY BANK AND TRUST COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

### Statement of the Case.

The petitioner, invoking the jurisdiction conferred by 28 U.S.C. § 1343, filed complaints against the various respondents in this series of consolidated actions in the District Court, alleging that the respondents deprived her of rights, privileges and immunities secured to her by the Constitution and laws of the United States, in violation of 42 U.S.C. § 1983, and conspired to deprive her of the equal protection of the laws in violation of 42 U.S.C. § 1985(3). The District Court, after hearing, entered judgments granting the respondents' motions to dismiss the actions. The

Court of Appeals affirmed the judgments of the District Court, and the petitioner seeks review of that decision by her petition to this Court.

The essence of the petitioner's complaints, insofar as the respondents James S. Bulkley and Valley Bank and Trust Company are involved, pertains to certain guardianship proceedings concerning the petitioner. On July 13, 1959, petitioner, who was then a retired member of the United States Army (R. 92), executed a power of attorney to Valley Bank and Trust Company for the collection of her monthly army retirement pay (R. 92, 56-58).

On November 16, 1959, respondent Bulkley, acting as attorney for the petitioner's two brothers, who were co-executors of their and the petitioner's father's estate (R. 93), filed a petition in the Probate Court for Hampden County, Massachusetts, praying that respondent Valley Bank and Trust Company be appointed guardian of the estate of the petitioner (R. 58-60), who was at this time a patient at the Veterans Administration Hospital located at Bedford, Massachusetts, under a commitment order issued by the District Court of Springfield, Massachusetts (R. 19), and based upon a certificate of her mental illness pursuant to the General Laws of Massachusetts (R. 17-18).

Valley Bank and Trust Company, after hearing, was appointed guardian of the estate of the petitioner by the Probate Court for Hampden County on December 15, 1959, and thereupon qualified as such guardian (R. 71-72, 174-184). On May 3, 1962, the respondent Bank was allowed by the Probate Court to resign as guardian of the petitioner's estate (R. 185).

Respondent Bulkley is, and has been for many years, an attorney engaged in the private practice of law in the Commonwealth of Massachusetts (R. 91). Respondent Valley Bank and Trust Company is, and was at the time of the actions alleged by the petitioner, a trust company

organized and existing under the laws of the Commonwealth of Massachusetts (R. 91). There is no allegation by the petitioner that at the time of any of the events complained of respondent Bulkley was an official of any state or respondent Valley Bank and Trust Company was an official agency of any state.

**Argument.**

The Court below did not err in affirming the judgment of the District Court granting respondents' motions to dismiss the petitioner's complaints on the ground that they failed to state a cause of action under the Civil Rights Acts, 42 U.S.C. §§ 1983, 1985(3), upon which relief can be granted.

At no time during the course of events of which the petitioner complains did respondents Bulkley or Valley Bank and Trust Company do any act involving the petitioner under color of state law. All of their actions were done as private citizens, and, in fact, the petitioner so alleges (R. 91). Such a situation is fatal to the petitioner's attempt to state a cause of action against these respondents under the Civil Rights Acts, 42 U.S.C. §§ 1983, 1985(3). *Campbell* v. *Glenwood Hills Hospital, Inc.*, 224 F. Supp. 27 (D.C. Minn. 1963). *Whittington* v. *Johnston*, 201 F. 2d 810 (5th Cir. 1953). *Daly* v. *Stotts*, 126 F. Supp. 555 (D.C. Okla. 1954). *Kenney* v. *Hatfield*, 132 F. Supp. 814 (D.C. Mich. 1955), affd. sub nom. *Kenney* v. *Fox*, 232 F. 2d 288; cert. den. sub nom. *Kenney* v. *Hatfield*, 352 U.S. 856, 77 S. Ct. 84, 16 L. Ed. 2d 66. *Joyce* v. *Ferrazzi*, 323 F. 2d 931 (1st Cir. 1963). See *Mezullo* v. *Maletz*, 331 Mass. 233 (1954). *Hoffman* v. *Halden*, 268 F. 2d 280 (9th Cir. 1959).

The attention of the Court is also respectfully directed to the petitioner's failure to comply with Rule 23 of this Court requiring a petition for writ of certiorari to contain

a concise statement of the case and a direct and concise argument amplifying the reasons relied on for the allowance of the writ pursuant to Rule 19 of this Court. The above-cited cases show that the decisions below in the instant case do not fall within the circumstances set forth in Rule 19 of this Court under which this Court would grant the writ of certiorari sought by the petitioner.

## Conclusion.

For the foregoing reasons the respondents believe that the petition for writ of certiorari in the instant case should be denied.

THE RESPONDENTS,
JAMES S. BULKLEY,
By Matthew J. Ryan, Jr.,
Attorney,
VALLEY BANK AND TRUST COMPANY,
By J. Bushnell Richardson, Jr.,
Attorney.